

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 349 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

WIPRO LTD

Versus

DIST COLLECTOR

MR NIRAV K. MAJMUDAR FOR MR PB MAJMUDAR for Petitioner
MR MUKESH PATEL, AGP for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 04/12/97

ORAL JUDGEMENT

1. A short issue is raised in this petition. Petitioners are manufacturing hydro-generated oil, i.e., Vanaspati. it is one of the commodity covered under the Gujarat Essential Articles (Licencing, Control and Stock Declaration Order, 1981, issued under Essential Commodities Act, 1955. The facts which are not disputed, and are necessary for resolving the present controversy are that petitioners intimated to the Collector on 28th

December, 1990 through two separate documents, Intimation No. 792 and 793, in form prescribed for that purpose about moving the stated number of tins of vegetable oil comprising of two consignments from the place of its disclosed storage to a destination outside State with necessary particulars.

	Order	No.
GTH/84(A)/3/ECA/1180/6419/B dt.	6.1.1984	issued in

exercise of powers under subclause (1) of clause 24 by the Government of Gujarat provides that information regarding sale including agreement to sell, disposal, delivery or distribution of edible oilseeds or, as the case may be, edible oils outside the State of Gujarat in the Form appended hereto in duplicate in such manner as to reach the concerned officer forty eight hours before the time of moving such edible oilseeds or edible oils from the place where it is stored with a view to sell, including agreement to sell, dispose off, deliver or distribute the same outside the State of Gujarat. The information through this intimation form reached Collector at 12.00 p.m. on that very day and it was returned with endorsement on that very day at 4.00 p.m. The endorsement also envisaged that validity of such intimation for moving the edible oil from the place of storage was upto 4.00 p.m. on 4.1.1991. The two consignments under the two intimation forms were despatched from the storage at Bhavnagar at 3.30 p.m. on 4.1.1991. The goods were seized at Bhilad checkpost near Vapi by the Supplies Inspector, Valsad. On being approached by the petitioners on 9.1.1991, District Supply Officer, Bhavnagar informed through Enquiry Officer, check post Vapi that truck containing the consignment under two intimations referred to above had left the place of storage at Bhavnagar at 3.30 p.m. on 4.1.1991 before expiry of the period of the validity of intimation, therefore, the transit was in order and the goods may be released. However, the officer at Vapi did not release the seized goods on the ground that as the last check post within the Gujarat State through which the consignment was to pass was mentioned as Vapi, goods if not crossed checkpost Vapi before the time limit fixed in the endorsement on the intimation, the goods could not be transported further, and therefore movement of goods from the place of storage is in breach of the condition of licence. In the aforesaid circumstances, petitioner approached this Court by way of this Special Civil Application. On 30.1.1991, this court issued Rule and by way of interim relief ordered for release of the goods and the trucks as the petitioner has filed undertaking in which the petitioner had undertaken to deposit the value of goods transported to Hyderabad or to furnish a bank guarantee of the same value in case the court ultimately

holds that the petitioners were required to transport the goods outside the Gujarat within seven days from the date of intimation. No reply has been filed to this petition by the State.

2. Learned counsel for the petitioner urged that the period of validity of intimation required to be furnished under the order issued in exercise of power under clause (24) of the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order 1981 relates to the movement of the goods from the place of storage mentioned in license and has no connection with the period of transit or reaching particular destination prior to the date of the validity of intimation. There is no provision according to Mr. Majmudar which prescribes the outer limit of period before which the goods despatched from the place of search under a valid intimation must reach any particular point or place of destination.

3. On the other hand, it was strenuously contended by Mr. Patel, learned A.G.P. on behalf of the State that the outer limit of the validity of intimation appearing in the endorsement on intimation form made by the Collector on receipt of such intimation and returned to the licensee, indicates that the goods must reach the place mentioned therein within the period of validity of intimation and merely moving of the goods from the place of storage within the period of the validity of intimation is not sufficient.

4. Having considered rival contentions before me and perused the order of 1981 and directions issued thereunder, vide Notification dated 6.1.1984 referred to above, I am of the opinion that under the existing provisions, there is merit in the contention of petitioner and the contention raised by the learned A.G.P. cannot be sustained.

5. It is required of a dealer in edible oil, an essential commodity, to get a licence under the Order of 1981 issued in prescribed form which contains terms and conditions under which licence is issued. Clause (2)(a) of licence stipulates that the dealer or purchaser mentions the place at which such dealer or purchaser is to carry on his business. Sub-clause (b) of Clause (2) of the licence provides that essential articles, for which the business as dealer or purchaser is to be carried under it, shall not be stored at any place other than any of the godowns/storage place mentioned in the licence. It further requires that if the licence holder intends storing essential articles at places other than

those specified under the licence, he shall give intimation of the actual occupation of any such godowns within 96 hours of actual occupation thereof to the licencing authority and shall preserve duplicate copy of such intimation with him.

6. This condition shows that dealer has to store his stocks at disclosed places. Change of godown or storage and movement from one godown to another for continued storage with dealer does not require pre intimation. Such change, which does not result in change in stock position may be informed to concerned authority within 96 hours of actual occupation of different place as godown or storage by the dealer. Only information is required, no permission is envisaged.

7. Clause 24 of the Order empowers the State Government, the Director of Civil Supplies, the Director of Food, the Collector of a district or any licensing authority, in conformity with the provisions of the Order for ensuring fair and equitable distribution of essential article by general or special order, to issue to any dealer or producer or class of dealers or producers such directions regarding maintenance of accounts, maintenance of stocks, storage, sale, submission of returns, furnishing information, display of prices, issuance of invoice or cash memo, weighment, disposal, delivery or distribution of any essential article as it or he may deem fit and it enjoins a duty on every dealer or purchaser to whom such direction is issued to comply with the same. In consonance with this provision, condition No. 11 has been included under the licence stating that licence holder shall comply with any direction that may be given to him by State Government in regard to purchase, sale and storage for sale of essential articles and in regard to the language in which the register, return or invoices are required to be written and maintained as per the conditions of licence.

8. It is in exercise of power under Clause 24 that the Government has issued directions vide Order dated 6.1.1984, keeping in view the requirement to store the stocks of essential commodity at a disclosed place, and with a view to be apprised itself with changes in stock position available for distribution within the State, relevant part of which reads as under:

"In pursuance of Sub-clause (1) of clause 24 of the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981, Government of Gujarat hereby directs that every

Licence Holder shall, with effect from 6th January, 1984 furnish to the Collector of the District or, as the case may be, to Food and Civil Supplies Controller, Ahmedabad, information regarding sale including agreement to sell, disposal, delivery or distribution of edible oilseeds or, as the case may be, edible oils outside the State of Gujarat in the Form appended hereto in duplicate in such a manner as to reach the aforesaid officer forty eight hours before the time of moving such edible oilseeds or edible oils from the place where it is stored with a view to sell, including agreement to sell, dispose off, deliver or distribute the same outside the State of Gujarat.

6. Description of the place of storage from where the consignment is proposed to be moved out.

7. Description of the mode of transport and the name of Railway Station, Port or place from which the consignment is proposed to be despatched in favour of consignee outside the State and the route by which the consignment will be transported from the place of despatch to the place of destination.

8. Name of the last check-post/Railway Station/Port in the State of Gujarat during the transit period.

9. Description of the destination namely the Railway station, Port or place outside the State."

9. The preamble of the aforesaid order, shorn of superfluity for the present purpose, will read, licence holder shall with effect from 6.1.84 furnish information regarding sale etc. of edible oil seeds or edible oil outside the State of Gujarat in Form appended in such a manner as to reach the officer 48 hours before the time of moving such oil seeds or oil from the place where it is stored with a view to deliver or distribute outside State of Gujarat.

10. This clearly lays emphasis on information regarding transaction resulting movement of goods outside State. The requirement of period is about reaching the information to concerned officer at least 48 hours before

movement from the place of storage takes place. The expression with a view to sell, dispose off, deliver or distribute outside State of Gujarat only indicates that this requirement of submitting information about transaction before movement of goods is only in cases where under the transaction, goods are to be moved outside State. Otherwise, movement within State is not required to be pre informed if goods are destined within State.

11. The perusal of the aforesaid preamble of the Order and the requisite information required makes it abundantly clear that direction is to furnish information about transaction resulting the edible oil stored with the licence holder to move out of State of Gujarat. Such information is to be furnished prior to actual movement of goods from place of storage in such manner as to reach the concerned authority forty eight hours before the time of moving such goods from the place where they are stored for destination outside State of Gujarat. This signifies that until expiry of 48 hours from receipt of information by the concerned officer, the commodity cannot move from the storage, if destined outside State of Gujarat. That signifies the importance of endorsement of time of receipt of the intimation form by the receiving officer, that is to say, before 48 hours of such time of receipt of information the goods cannot be moved from the place of storage. However, no order or direction require any information about the time or date by which the goods, which have moved from place of storage after the expiry of requisite period from the time the information about transaction resulting in movement of goods outside State of Gujarat has reached the concerned officer, must reach the destination outside State, or any point within State. Nor any period for reaching the goods at destination has been prescribed under the Order, Rule, or any direction issued in exercise of power conferred on any authority in this regard. After endorsing the time of receipt and date when the required intimation has reached the competent officer, the further endorsement of date and time of despatch of intimation form back to the license holder is made by the competent officer. This is so because by yet another order dated 6.1.1984 the Collector (Supplies) had also issued directions in exercise of his powers under clause 24 of the Order of 1981 that the intimation for moving the goods from the place of storage by the licensor should be valid for that purpose for seven days only with effect from the date and time of the signing the endorsement. It is unequivocally apparent that the purpose for fixing time limit of the validity of intimation is that after the expiry of that period, under

the said intimation, the goods cannot be moved. However, it nowhere gives any directions about the goods which have already come in motion during the validity of the period of seven days from the time of signing the endorsement and are in movement towards their destination must reach before any particular date or time to the destination or any intermediary station.

12. The object of securing information under the Order dated 6.1.84 is not to obstruct or control the period of transportation once goods have been moved from the place of storage under a valid intimation which is in force for such movement. After the goods have moved out of storage of such goods, it is not within the control of licence holder how and with what speed the transporter carries the goods to destination. It depends on the carrier which is not necessarily through road transport. It may be by rail, road, air or water. The means of carriage may also differ, over which there is no control. The reaching of goods to destination, once they move out from the place of storage are subject to other exigencies of transport. The object of securing such information is to keep a track on the movement of an essential commodity from the place of its licenced storage to its destination through intimated route so that in case of any deviation and any attempt to carry the goods elsewhere may be kept under check, and also any breach of conditions of licence in respect of those goods may be pursued with promptitude on any such information being received. But there is no warrant for interpreting these provisions and directions in the manner in which suggested by learned A.G.P., to consider that the period of validity of information which is about transactions in pursuance of which the goods are disposed off, delivered or distributed out of State of Gujarat and is to reach concerned officer 48 hours prior to movement of goods from the place of storage mentioned in licence, should further be extended to import such time limit by which goods in motion within the period valid for movement reach destination or intermediary station which have been mentioned in intimation form. The mere fact that the intimation form also requires information about the railway station to which the goods are destined as well as the check post through which it shall leave the State territory cannot lead to this inference that the goods must leave of place mentioned as the last check post within the State of Gujarat area enroute destination and reach destination prior to the expiry of validity period of intimation which permit the licence holder to move the goods from the place of its storage in ordinary course of his business transaction of sale or despatches or delivery to others, any time after

forty eight hours of receipt of such intimation by concerned officer, but before the expiry period mentioned in endorsement, which only indicates outer limit of time before which goods under intimation must move out of place of storage, for the purpose of going out of State of Gujarat, and not thereafter. On lapse of period fresh intimation or extension of period may be required before moving the goods from their place of storage. The acceptance of contention of respondent will mean that goods under information leave not only the last checkpost within State of Gujarat, but reach destination before that date, because till then goods are in movement. For such interpretation there is no warrant.

13. It follows that the authority making seizure order in the case of petitioner's goods has acted unauthorisedly and beyond the scope of the provisions of the Gujarat Essential Articles (Licencing, Control and Stock Declaration) Order 1981 and directions issued thereunder. It is also surprising that in spite of information from District Supply Officer, that goods have been removed from place of storing within the validity period of intimation and the movement was in order, he has chosen to sit tight over the seizure order compelling the petitioner to knock the doors of this Court.

14. In the result, the petition is allowed. The impugned seizure orders are quashed. Costs of this petition, which is quantified at Rs.2000/- (Rupees Two thousand only) is awarded to the petitioner. The undertaking furnished by the petitioner as a condition of interim relief, is discharged.

Rule made absolute.

(Rajesh Balia, J)

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